

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHRISTIAN NLANDU MBENGO,)	
)	
Petitioner,)	Civil Action No. 06-1208
)	
v.)	Judge Arthur J. Schwab
)	Magistrate Judge Amy Reynolds Hay
WARDEN MR. MILLWARD,)	
Moshannon Valley Corr. Center,)	
Respondent.)	

REPORT AND RECOMMENDATION

I. RECOMMENDATION

Presently before the court is Petitioner's, Christian Nlandu Mbengo's, *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2241. It is recommended that the petition be transferred to the United State District Court for the Middle District of Pennsylvania, pursuant to 28 U.S.C. § 1406(a).

II. REPORT

According to Petitioner, on or about November 16, 2005, he pleaded guilty in the United States District Court for the North District of Georgia to various fraud and theft charges. The district court sentenced him to serve 70 months imprisonment and ordered him to pay restitution in the amount of \$878,126.50.

Petitioner is currently incarcerated at the Moshannon Valley Correctional Center ("MVCC"), which is located in Philipsburg, Pennsylvania. He contends that personnel at MVCC improperly "set up [an] installment payment of \$25.00 per quarter and deduct[s] the funds from money sent from [his] family or his inmate trust funds, thereby exposing [him] to financial hardship and creating cruel and unusual punishment, constituting a miscarriage of justice." (Doc. 7 at 4). He names the warden of MVCC as the respondent and he seeks an order from this court directing MVCC to cease collecting the \$25.00 installment payment from him.

The court takes judicial notice of the fact that MVCC is located in Centre County, which lies within the Middle District of Pennsylvania. 28 U.S.C.A. § 118(b) (setting forth which counties of Pennsylvania are located in which federal districts). It is well-settled that a federal prisoner's § 2241 habeas petition that challenges the execution of his sentence must be filed in the district of confinement. See e.g., Rumsfeld v. Padilla, 542 U.S. 426, 442-47 (2004); United States v. Kennedy, 851 F.2d 689, 690 (3d Cir. 1988); United States v. Jack, 774 F.2d 605, 607 n. 1 (3d Cir.1985). Accordingly, because MVCC is located in the Middle District, the proper venue for the instant action is in that district. It is therefore recommended that this action be transferred to the United States District Court for the Middle District of Pennsylvania.

III. CONCLUSION

In accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) & (C), and Local Rule 72.1.4 B, Petitioner is allowed ten (10) days from the date of service to file written objections to this report. Failure to timely file objections may constitute a waiver of any appellate rights.

Respectfully submitted,

/s/ Amy Reynolds Hay
United States Magistrate Judge

Dated: 13 November, 2006

cc: The Honorable Arthur J. Schwab
United States District Judge

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